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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-second session

# SUMMARY RECORD OF THE 21st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 15 August 2000, at 10 a.m.

Chairman: Ms. MOTOC

later: Mr. OLOKA-ONYANGO

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The meeting was called to order at 10 a.m.

THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS (agenda item 9) (continued) (E/CN.4/Sub.2/2000/43; E/CN.4/Sub.2/CRP.3; E/CN.4/Sub.2/2000/NGO/11, 18 and 20; E/CN.4/Sub.2/2000/60 and Add.1; A/54/177; A/RES/54/156)

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(f) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES (continued)

1. Ms. PENNEC (World Organization against Torture (OMCT)) drew the Sub-Commission's attention to the fact that five provinces in south-eastern Turkey had been under a state of emergency since 1987 as part of an anti-terrorist campaign. Yet by definition a state of emergency should be temporary.

2. Despite its commitment to apply the "Copenhagen criteria", Turkey continued to pursue a policy of harassing activists from its own non-governmental organizations (NGOs). The Observatory for the Protection of Human Rights Defenders, a joint programme of OMCT and the International Federation for Human Rights (FIDH), was regularly asked to intervene on behalf of human rights defenders in Turkey, particularly the Human Rights Association, whose Chairman was currently in prison.

3. Her organization called on Turkey to implement fully the Declaration on Human Rights Defenders adopted by the General Assembly. It was unfortunate that the new regulations governing arrest procedures, which specifically contemplated the establishment of a mechanism for registering detention cases, had not led to any significant progress in the notification of detainees' family members. That situation fostered the use of torture, as evidenced by the case of the mayors of Kurdish origin who had been arrested on the order of the Chief Prosecutor of the State Security Court in Diyarbakir. The three ma,ors, who had been held in detention at the police station for a week, had stated that they had been tortured.

4. Accordingly, OMCT requested the Sub-Commission to urge the Turkish Government to conform to national and international standards guaranteeing the legality of states of emergency, bring the procedures of the State security courts into line with the norms of international human rights law, restore the rule of law in south-eastern Turkey and ensure civilian monitoring of military activities in the region.

5. OMCT also wished to draw the Sub-Commission's attention to the situation in the Moluccas, where an ethno-religious conflict was taking place between the largely Christian indigenous population and Muslims; more than half a million inhabitants had been displaced and more than 4,000 persons had been killed in 19 months. The Indonesian Government had imposed a state of emergency, and roughly 12,000 members of the security forces were currently in the Moluccas, but a number of witnesses maintained that certain soldiers were helping the Muslims.

6. OMCT therefore called upon the Indonesian authorities to do everything possible to guarantee the personal integrity and safety of the population of the Moluccas, especially the Christian indigenous population, and to ensure respect for the international norms governing states of emergency.

7. Mr. MONOD (War Resisters' International) drew attention to a study on conscription and conscientious objection to military service his organization had prepared and said that in many countries draft evaders and deserters were not entitled to the minimum treatment provided for in human rights instruments and the recommendations of the Sub-Commission. Yet there were many instances of young people being forced to enlist in armies or in guerrilla or other movements against their will. Hundreds of thousands of young people of military service age failed to report for recruitment in order to avoid the horrors of military life. In countries at war they were actively sought and ran the risk of imprisonment. Deserters who fled the army and hid also risked years of prison, or even the death penalty if the country was at war.

8. His organization called upon the Sub-Commission to pay special attention to the situation of draft evaders and deserters so that they could benefit from the resolution adopted by the Commission on Human Rights in favour of conscientious objectors. He was very disappointed that no resolution on draft evaders and deserters had not been submitted that year. Armies were still considered to be untouchable. He hoped that during the twenty-first century States would agree to do away with armies rather than deserters.

9. Ms. BIONDI BIRD (International Confederation of Free Trade Unions) quoted from a statement by the Assistant General Secretary of her organization which stressed the stabilizing role trade unions played in countries where law and order had broken down. In Zimbabwe and Fiji trade unions were mobilizing campaigns to call for a return to democracy and to stop the countries from falling into anarchy.

10. She described the situation in both countries and said that in Zimbabwe on 2 August 2000 unions led by the Zimbabwe Congress of Trade Unions (ZCTU) had shut down the country's factories, farms and businesses to protest against the anarchy prevailing in the country. Over 80 per cent of the country's workers had shown their support for ZCTU, which was calling for the re-establishment of the rule of law.

11. In Fiji the Trade Union Congress had been at the forefront of the fight for a return to democracy and the 1997 Constitution following the coup d'état of 19 May 2000. During the preceding two months trade unions had worked closely with many other civic groups, including business, religious and women's groups, to demand a return to the rule of law after the rebels had taken over the country. Throughout that time there had been strong international trade union support for Fijian unions, and labour organizations throughout the Pacific had boycotted Fijian goods in order to force a return to democracy.

12. On 2 August 2000 a coalition of civil society, including a strong union presence, had held a National Action Day calling for democracy and constitutional government. Eight trade unionists had been held hostage, union offices had been invaded and the General Secretary of the Fijian Trade Union Congress had received death threats. Particularly disturbing was the fact that the threats had been made in the presence of police officers, who had refused to take any action to restore order despite having been asked to do so.

13. Her organization had made a strong complaint to President Iloilo, urging him to restore order and to ensure that the thugs who had attacked union leaders should be brought to justice. Her organization commended the efforts of the trade unions in Zimbabwe and Fiji for their efforts to rebuild democracy in their countries and offered them its support.

14. Ms. SALOMON (Minority Rights Group) welcomed the release on bail in Egypt of Professor Saad Edin Ibrahim, a distinguished scholar and human rights defender as well as the founder and director of the Ibn Khaldun Centre for Development Studies, who had been arrested with several of his colleagues on 1 July 2000. The Ibn Khaldun Centre had been forcibly closed. The arrests, which were reportedly made under emergency measures and were not based on formal charges, might have been linked to the Centre's activities in connection with the parliamentary elections to be held in November 2000. The Centre had been planning to set up an independent committee to monitor the Egyptian elections, and it had recently produced a pro-democracy documentary film. It had also received funding from the European Union to conduct a voter-registration campaign. Her organization was concerned about the consequences those events might have on the democratic debate in the days leading up to the parliamentary elections and, more generally, for the protection of human rights and the future of civil society in Egypt.

15. Egypt, which had been a State party to the International Covenant on Civil and Political Rights since 1982, was bound to respect the rights of detained persons. Although States could derogate from certain human rights provisions during times of emergency, the United Nations Human Rights Committee had commented that the 19-year-long state of emergency in Egypt was one of the main difficulties impeding full implementation of the Covenant in that country. The Committee had noted that during times of emergency, States could not restrict either habeas corpus or the fundamental rights set out in article 9, nor was any derogation from article 14 permissible. The Committee had expressed concern about the duration and conditions of police custody and administrative detention in Egypt and had recommended that particular attention should be paid to the protection of the rights of detainees.

16. Law No. 153, which had been adopted in May 1999 and sought to regulate the functioning of NGOs, had also given rise to concern about the freedom of expression, particularly in the case of human rights defenders. Such legislation did not seem compatible with the obligations set out in articles 21 and 22 of the International Covenant on Civil and Political Rights or with the Declaration on Human Rights Defenders. The Law had been declared unconstitutional on technical grounds by the Egyptian Constitutional Court in June 2000.

17. Her organization recommended that the United Nations should: request the Egyptian authorities to clarify whether any of Saad Edin Ibrahim's were still detained and, if so, to release them or charge them and to allow the reopening of the Ibn Kaldun Centre; request the Human Rights Committee to continue to monitor the human rights situation in Egypt, particularly during the forthcoming elections; and call upon experts, Governments, NGOs and donor agencies to monitor the situation in Egypt closely.

18. Mr. PANDITA (African Commission of Health and Human Rights Promoters) said that the three principal causes of human rights violations around the world were international terrorism sponsored by groups, organizations or the State; drug trafficking; and the proliferation of small portable weapons. All three could be considered to be international crimes.

19. International terrorism, which had taken tens of thousands of innocent lives and had forced millions of people to abandon their homes and become refugees, was likely to be taken up by the Sub-Commission under a separate agenda item. Drug trafficking had given rise to dreadful mafias who financed armed struggle and prevented Governments from discharging their constitutional and moral duty to their citizens. When such organizations established international links and created conduits for drug trafficking, such activities must be recognized as international crime.

20. The proliferation of small arms also had international implications. When arms, particularly portable arms, were transported and distributed clandestinely, the purpose was not to combat internal subversion or an external threat but to intimidate the population, disrupt peace and tranquillity and force the Governments concerned into a confrontational situation.

21. The countries of West Africa had put a moratorium on the proliferation of small arms in order to give peace a chance. In many other regions, however, especially in South Asia, insurgent groups had acquired large quantities of arms which they had distributed to mercenaries, openly expressing their objective of bleeding certain States white until they sued for peace.

22. His organization believed that it was not enough to come up with a concrete definition of international crime. Given that international terrorism, drug trafficking and the proliferation of small arms destabilized not only countries but entire regions, the time had come to uproot the menace posed to the world by those three types of international crime.

23. Ms. WAKIM (North-South XXI) welcomed the lifting of immunity from General Pinochet in Chile, which was a victory for human rights activists, justice and the peoples of the South. Peoples everywhere were subject to vastly unequal treatment and unjustified discrimination. Such profound inequalities were the underpinnings of a new kind of impunity enjoyed not only by dictators but also, and primarily, by many unscrupulous businessmen who committed economic, social and cultural crimes against peoples every day. The globalization of transnational trade came at a very high price where economic and social rights were concerned. In particular, it deprived peoples of the resources they needed for their development. It was known, for example, that the amount of money on deposit in banks in tax havens far exceeded the debt of all the countries of the South taken together. Yet for lack of any real political will, "social criminals" were virtually guaranteed impunity. It was thus impossible to talk about the proper administration of justice without discussing the establishment of mechanisms to combat the "new economic dictators".

24. Mr. GUISSÉ, pondering the notion of justice, said that there was a wide gap between the law and the courts. Every country in the world had ample legislation containing measures to ensure a system of justice that guaranteed the protection of persons, individual freedoms and compensation for injury - quite simply, a State governed by the rule of law, in accordance with freely accepted international norms.

25. Unfortunately, the courts had not kept pace, owing to their lack of independence from political, financial and social powers. Political intervention in the judiciary had always had the effect of influencing and undermining judicial decisions. That was particularly true in developing countries, where a judge's career depended on the good will of the head of State and judges were obliged to accept all sorts of tasks that were inconsistent with the notions of justice and equity. Under such a system judges were not promoted for their competence, hard work or loyalty, but for having pleased the chief. Justice was thus violated, dragged through the mud and crushed under the heels of dictators and powerful moneyed interests. Those whose only arguments were truth and the law were sure to lose their case. Many innocent persons languished in prison or died there under indescribable conditions. When justice was tainted with racism, it constituted the very negation of justice.

26. The death penalty was being used with increasing frequency. The United States of America was a past master at cynically executing condemned prisoners, who were often young black men under the age of 18. He welcomed the growing awareness of the problem and the emergence of an abolitionist movement in that country, and he commended the attitude of the European countries towards the death penalty, which had been virtually abolished in that part of the world.

27. Justice meant not only criminal justice but also civil, social and economic justice. Protests ought to be raised against the court-ordered confiscation of movable and immovable property by a justice system that heeded only money and helped to impoverish people.

28. Corruption, which took many forms, was becoming entrenched, and it was increasingly the rule where judges, lawyers and other judicial personnel were concerned. Lying and customs, tax and other types of fraud also existed in addition to corruption.

29. The flaws in the administration of justice had led to the creation of international jurisdictions that were intended not to replace but to supplement national jurisdictions. Not everyone seemed to grasp the notion of international or universal competence. It was a principle of international law which meant that when an international crime was committed, no matter where, the criminal courts of all member States were competent to try it. The place that an offence classified as an international crime was committed had no influence on the competence of the court that would hear the case.

30. To consolidate that principle a framework must be established that would allow all States to collaborate. Such collaboration was a definite advantage in combating impunity, but it also posed the risk that a country might choose to try offences committed by its own nationals, thereby guaranteeing them impunity. It was when national jurisdictions failed, however, that international jurisdiction took over. That was why the international tribunals for the former Yugoslavia and Rwanda had been created. Another important principle to bear in mind was that of the imprescriptibility of international crimes.

31. The fact that the international justice system was giving increasing attention to the notion of the reparations owed to victims was a welcome development that was reflected in some recent decisions of the Inter-American Court and the European Court of Human Rights.

32. In conclusion, he requested the International Labour Organization (ILO) to conduct a study on trade union freedom in the judiciary. The full exercise of that freedom would help to strengthen the independence of judges. No ILO convention prohibited government workers from unionizing, but the executive branch prevented them from organizing by invoking principles that were no longer valid. France, for example, was an example of a country in which the judges' union, far from impeding the functioning of the justice system, helped it to function more effectively.

33. Mr. PINHEIRO, speaking on the administration of justice in Indonesia, said that the International Commission of Inquiry on East Timor had recommended the establishment of an ad hoc international tribunal for East Timor in order to bring the perpetrators to justice as soon as possible. The three special rapporteurs of the Commission on Human Rights, in their December 1999 report, had recommended that the tribunal should be established in a matter of months. However, those recommendations had not been followed up. Credible justice depended on the establishment of independent and impartial human rights tribunals. While a bill on human rights courts was before the Indonesian Parliament, it would not be considered until October 2000, and it was likely to be opposed by hardliners in the military who had returned to power. Although the Indonesian Government had pledged the year before to bring to justice those civil and military individuals responsible for violations of human rights and to combat impunity, justice in Indonesia continued to be administered by military courts, like the one set up recently in Aceh province. The international community must therefore continue to monitor the administration of justice in Indonesia. Given the situation there, the establishment of an international tribunal remained a viable option.

34. Mr. SINGH RAI (Liberation) denounced the Indonesian judicial system, which was based essentially on military tribunals, such as those that had been established to try political crimes at Aceh, contrary to recommendation 9 of the report of the Working Group on Arbitrary Detention on its mission to Indonesia. Moreover, the recommendations made by the three special rapporteurs of the Commission on Human Rights calling for the prompt establishment of an ad hoc international tribunal for East Timor had not been implemented. An international tribunal for East Timor was the only viable option.

35. He welcomed the Sub-Commission's consideration of the draft convention on the protection of all persons from enforced disappearance and drew attention to the case of Jafar Siddiq in Aceh province, who had disappeared during the course of the current session.

36. In Yemen violations of the freedom of expression, torture and arbitrary detentions continued unabated. He called upon the Sub-Commission to press the Yemeni Government to abide by its international commitments and begin a dialogue with the National Opposition Front (MOWJ).

37. His organization invited the Sub-Commission to express its objection to the reinstatement in India of the Terrorist and Disruptive Activities Act, which had been allowed to lapse in response to international pressure. That Act reversed the principle of presumed innocence. A similar law, governing states of emergency, existed in Sri Lanka and had led to human rights abuses, extrajudicial executions and acts of torture. In Punjab, India, an international inquiry should be conducted of the acts of the police, who were responsible for the execution of 3,000 unidentified persons. His organization had no confidence in the ability of the Indian Human Rights Commission or the Indian Supreme Court to shed any light on the matter or to provide justice. In view of the seriousness of the situation in South Asia, there was a need for a special rapporteur for that region. In Malaysia the recent proceedings against the former Deputy Prime Minister, Mr. Anwar Ibrahim, had raised the problem of politically motivated persecutions. Lastly, mention should be made of the shocking example of Australia, where the High Court had concluded that genocide was not recognized as a crime.

38. In conclusion, his organization requested the Sub-Commission to recommend that penalties should be imposed against States parties that failed to implement or suspended the implementation of treaties they had ratified.

39. Mr. SÁNCHEZ (American Association of Jurists) welcomed the decision by the Argentine Supreme Court to reject the attempt by the Military Tribunal to remove the trials relating to the kidnapping and disappearance of children during the dictatorship from 1978 to 1983 from civil jurisdiction. The Military Tribunal had been counting on the passivity of the executive branch, which was in fact required to implement the Inter-American Convention on Forced Disappearances.

40. That situation showed that sometimes human rights violators were less shielded by impunity in small countries than in the so-called major democracies. The decision taken in June 2000 by the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia

not to investigate the acts of the North Atlantic Treaty Organization (NATO) during the conflict in Yugoslavia was further proof of that. The document prepared jointly by the American Association of Jurists and the Centre Europe-Tiers Monde (E/CN.4/Sub.2/2000/NGO/18) considered that question in detail. That document also noted that the Prosecutor, who had decided not to open an investigation of crimes committed by the Kosovo Liberation Army (KLA) on the grounds that the Tribunal no longer had jurisdiction over Kosovo after the hostilities were over, thus claimed to be unaware that an internal armed conflict was currently taking place in Kosovo and that the Tribunal had jurisdiction under its Statute, article 3 of the Geneva agreements and the Tribunal's own jurisprudence. It should also be noted that the United States authorities were demanding that in establishing an international criminal court an exception should be provided in respect of the immunity of United States armed forces, as Mr. Jesse Helms, Chairman of the Senate Foreign Relations Committee had stipulated in a bill. One might well ask why the United States of America did not demand the same guarantees for the International Criminal Tribunal for the Former Yugoslavia and why that country had never objected to that court's competence to investigate United States actions in Kosovo. Apparently the Prosecutor, who was merely their tool, provided them with all necessary guarantees. The Prosecutor's independence was entirely fictitious. In practice, she was subject to the will of those who had selected her, namely the United Nations Security Council and the Western Powers, among whom the United States played a dominant role. The Prosecutor's alleged independence protected that country from any criminal proceedings that might be brought by truly representative bodies, such as a qualified majority of the United Nations General Assembly, or from any criminal complaint by the victims or their representatives. The great Powers thus had mechanisms at their disposal and planned to set up others to ensure that their own criminals enjoyed impunity.

41. Mr. FATTORINI (Movement against Racism and for Friendship among Peoples (MRAP)), speaking of the administration of justice throughout the world, drew attention to the many cases of people being condemned for their views, judgements against women, the unfairness of the death penalty and the a priori sentencing of suspects, such as Mumia Abu Jamal and Léonard Peltier, for whom MRAP was seeking justice.

42. In Turkey, despite the appeal by the Kurdish Workers' Party (PKK) for an end to hostilities, the attitude of the Turkish authorities remained unchanged, particularly with regard to the deputies who had been condemned to 15 years' imprisonment. The Diyarbakir human rights association had been banned indefinitely. The European Court of Human Rights had already issued several statements on Turkey's judicial practices and on cases of torture. Turkey might make efforts in that area if it hoped to join the European Union. With regard to Morocco, he said that MRAP welcomed the changes that had taken place since the new king had come to power, but wished to draw attention to the three Saharans who had been unjustifiably sentenced at a trial in Agadir in June 2000 to three to four years' imprisonment for having threatened internal security. That case raised the issue of the referendum that the United Nations was supposed to hold. For the time being, however, it was necessary to establish a climate of freedom and a spirit of citizenship. It was unacceptable that demonstrators should appear in court in 1999 without a lawyer present and that three others should be given heavy sentences even though they were

seriously ill. As for disappeared persons, there had been positive developments over the past year, with the exception of disappeared Saharans. Lastly, MRAP called for the release of Mr. Mohamed Daddache, a prisoner of conscience according to Amnesty International, who had been sentenced to death and had been in prison for 20 years despite having been pardoned.

43. Ms. HAMPSON said that international human rights mechanisms were or should be subsidiary. A State was obligated to protect and enforce human rights through the domestic legal order. When a human rights defender was persecuted or tortured, two violations were alleged: the initial violation and then a violation of the obligation to provide an effective domestic remedy. If the State provided effective domestic remedies, it was much less likely that violations would become systematic, thereby reducing impunity, and that a country would become the target of international concern. However, the reports of the special rapporteurs and working groups made it clear that torture and arbitrary detention and killings were routine occurrences in many countries, in violation of domestic law. The problem lay in ensuring the practical implementation of the obligation to provide domestic remedies.

44. Referring to the report of the European Commission on Human Rights on the application submitted by Nasir İlhan against Turkey (No. 22277/93, paras. 243 and 244), she said that instances of serious human rights violations in south-east Turkey had revealed an absence of domestic remedies and, in particular, 14 instances of dereliction of duty by the security and police forces. Those examples reflected the internal dimension of impunity. Impunity also concerned systematic violations of human rights, crimes against humanity and war crimes for which the perpetrators sought and found refuge in other States. It was to be hoped that the future International Criminal Court would be more systematic and less arbitrary than States in dealing with those criminals.

45. A concrete example of the problem was the case of a mujahideen commander known as Zardad who was alleged to have committed serious war crimes and crimes against humanity at a checkpoint situated on a road passing through Afghanistan that was under Taliban control. The Taliban had not asked for Zardad's extradition to Afghanistan in order to stand trial after he had fled and sought asylum in a country that did not have an extradition agreement with Afghanistan. If it had, he could have claimed that he ran the risk of being subjected to the death penalty in his own country. One might then ask what recourse a country of asylum had, knowing that international law provided no barrier but provided that war crimes, including serious violations of article 3 of the Geneva Conventions of 1949 and other violations committed in non-international conflicts were crimes of universal jurisdiction. If the International Criminal Court was established, Zardad would come under its jurisdiction. But if he was located in a country whose national courts were competent to conduct proceedings on the basis of universal jurisdiction or under domestic law, he could be tried there. She urged States whose courts did not apply criminal law on the basis of universal jurisdiction to enact domestic legislation that would make it possible to try the presumed authors of war crimes or crimes against humanity.

46. Ms. SAHUREKA (International Association of Democratic Lawyers), quoting Nelson Mandela, said that it was always the oppressor and not the oppressed who dictated the form of the struggle. That was particularly true in the Moluccas, where 20,000 heavily armed

Indonesian soldiers supported by 30,000 Laskar Jihad mercenaries were committing gross and massive violations of human rights, particularly of the Geneva Conventions of 12 August 1949 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: the razing of villages, arbitrary detentions, torture, rape, mutilation, enforced disappearances and slaughter, especially of women and children - such was the fate of Moluccan civilians.

47. The conflict was not an ethnic or religious one but an international conflict. The Moluccan people was merely defending its right to exist as a people on its ancestral ground. Muslims and Christians had always lived in peaceful coexistence in accordance with traditional laws, or adat. That balance had been disrupted with the arrival in the archipelago of hundreds of thousands of people under the transmigration programme begun in the 1960s by the Jakarta Government. The purpose of the programme was to stifle the nationalist aspirations of the Moluccans, who had briefly known independence as the Republic of South Moluccas.

48. The European Parliament had recently adopted several resolutions requesting the European Commission and the Council of Europe to urge the Indonesian Government to prosecute the parties responsible for those violations. On behalf of the Moluccan people, her organization called for the sending of a fact-finding mission to the Moluccas, for the Special Rapporteur on torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit the region, for those responsible for human rights violations, including political and military leaders, to be brought to justice, for the Indonesian army and its mercenaries to withdraw from the Moluccas and for international organizations to provide humanitarian aid to the population of the region.

49. Mr. YOKOTA, introducing the report of the Sessional Working Group on the Administration of Justice (E/CN.4/Sub.2/2000/CRP.3) in his capacity as Chairman-Rapporteur, said that the Working Group had only been able to meet for a total of four hours. The report would be issued in all official languages under the symbol E/CN.4/Sub.2/2000/44.

50. He thanked the experts of the Sub-Commission and the governmental and non-governmental observers, especially International War Resisters, Pax Romana and the International Commission of Jurists, who had contributed to the discussion in the Working Group.

51. Mr. Guissé had presented his follow-up report on the evolution of the death penalty (E/CN.4/Sub.2/2000/WG.1/CRP.1) in which he had appealed against application of the death penalty to juveniles under 18, pregnant women, women with young children and elderly persons. The Working Group had supported that appeal.

52. With regard to summary, arbitrary and extrajudicial executions, which were rampant, particularly in areas of armed conflict, the Working Group had stressed that the parties to a conflict should endeavour to respect international humanitarian law, negotiate ceasefires and secure peace. The industrial countries should stop providing weapons, which perpetuated armed conflicts.

53. Mr. Alfonso Martínez had provided an oral update on the question of the privatization of prisons and said that that practice was gradually expanding. The Working Group had asked him to continue to submit an annual report, written or oral, on that topic.

54. Mr. Fix-Zamudio had presented a study on improvement and efficiency of the judicial instruments for the protection of human rights at the national level and their impact at the international level: systematic and comprehensive analysis of the various judicial and procedural instruments for the protection of human rights in the domestic sphere (E/CN.4/Sub.2/1999/WG.1/CRP.1). It had been stressed that such instruments should provide for rapid procedures, precautionary measures and restitution measures. The procedures of amparo and habeas corpus had also been considered.

55. The Working Group had considered the question of the administration of justice through military tribunals and other exceptional jurisdiction on the basis of a working paper prepared by Mr. Joinet (E/CN.4/Sub.2/2000/WG.1/CRP.2), in which the author had proposed examining positive developments with a view to finding a better way of making the administration of justice by military tribunals compatible with the principal international norms applicable in that area. The Working Group had asked Mr. Joinet to prepare a working paper on that subject for the next session.

56. The question of the domestic implementation in practice of the obligation to provide effective remedies had been discussed by Ms. Hampson in an oral report. She had stressed that an effectively functioning domestic system for providing redress normally had a preventive effect and was therefore one of the best safeguards against impunity. The Working Group had decided to entrust Ms. Hampson with the task of preparing a working paper on that topic for the next session.

57. The Working Group had decided to add another item to the agenda for its next session, on discrimination in the criminal justice system. It had asked Ms. Zerrougui to prepare a working paper on that subject. Ms. Zerrougui had requested the members of the Working Group and the experts of the Sub-Commission to provide her with information on that topic.

58. Lastly, the Working Group had decided to submit to the Sub-Commission a draft resolution requesting the Economic and Social Council to authorize the Working Group to hold a two-day pre-sessional meeting on the administration of justice in 2001.

59. He concluded by thanking the staff of the Office of the High Commissioner for Human Rights without whose help the report of the Working Group could not have been prepared on time.

60. Mr. Oloka-Onyango took the Chair.

61. Ms. NAKAJO (International Movement against All Forms of Discrimination and Racism (IMADR)) said that the right to a fair trial had been violated in Japan in the Sayama case. Mr. Kazuo Ishikawa, who was a member of the Burakumin minority, had been convicted 37 years earlier of a crime he had not committed. In July 2000 the Tokyo High Court had dismissed his request for a retrial. However, the prosecutor in charge of the case had

admitted that a large amount of documentary evidence had not been made available to Mr. Ishikawa. In November 1998 the Human Rights Committee had recommended in its concluding observations that Japan should guarantee the disclosure of evidence and provide human rights education for judges. Neither of those recommendations had yet been implemented. The Government had, however, established a council on the reform of the judicial system.

62. The Sayama case also raised the question of discrimination against minorities in Japan. There was in fact reason to believe that prejudice against the Burakumin had led the police to give credence to witnesses who had claimed that Mr. Ishikawa was guilty.

63. IMADR was therefore calling for respect for the right to a fair trial and for a reform of the Japanese justice system to that end, in accordance with the International Covenant on Civil and Political Rights and the recommendations of the Human Rights Committee.

64. Mr. BHAN (International Institute for Peace) said that while some non-State actors, such as terrorist fundamentalist groups, were committing crimes in many regions of the world, States also denied justice. For example, the British Government had just refused, allegedly at the request of Pakistan, to extend the visa of Hasan Sharif, Nawaz Sharif's son, even though he had been living in the United Kingdom for the past seven years. The military junta that had deposed Prime Minister Nawaz Sharif had subsequently imprisoned all his family members. Mr. Hasan Sharif was convinced that if he returned to Pakistan he would be arrested as soon as he arrived at the airport.

65. The savage repression in Pakistan of the Mohajirs and the political party that represented them, the MQM, which took the form, inter alia, of extrajudicial killings, arbitrary detention and enforced disappearances, should also be criticized.

66. It would seem that the State in Pakistan had ceased to administer justice to political opponents, democrats, human rights activists and entire communities that were demanding not secession but autonomy. Consequently, the Sub-Commission should put pressure on the Pakistani Government to make it desist from such blatant violations of human rights.

67. Mr. KHAN (Association pour la promotion de l'emploi et du logement (APEL)) said that the situation of human rights in the Northern Areas and Pakistan-occupied Kashmir was getting worse. Unlike India, Pakistan could not claim that foreign militants were present in order to deny entire populations their fundamental rights.

68. The Northern Areas had been under a state of emergency ever since Pakistan had taken control of them under the dubious Karachi Agreement. Pakistan's decision to integrate the Northern Areas into the country was devoid of legitimacy. Those territories were an integral part of Kashmir.

69. The population of the Northern Areas did not have the right to appeal court decisions and was not represented in the administrative structure. The Northern Areas Council which had recently been established by the Pakistani Government had no powers to defend the interests of the people. Pakistan's Supreme Court and High Court had directed the Pakistani Government to

restore the fundamental rights of the people of the Northern Areas and let their representatives sit in the Pakistan-occupied Kashmir Assembly. The Pakistani Government had not only failed to comply with both directives but was stepping up its repression of political parties, particularly the Balawaristan National Front and the Karakorum Students Organization. In so-called Azad Kashmir political opponents and pro-independence partisans also fell victim to secret agencies.

70. In the face of that situation, his organization requested the Sub-Commission to take notice of the violation of the fundamental rights of the people of Gilgit and Baltistan.

71. Ms. Motoc resumed the Chair.

72. Mr. VO VAN AI (International Federation of Human Rights Leagues (FIDH)) said that his organization was seriously concerned by the recent attacks on civil society by the Egyptian authorities. Mr. Saad Edin Ibrahim, Director of the Ibn Khaldun Centre for Development Studies, had been arrested on 30 June 2000 for having received funds from abroad without the approval of the authorities and disseminating misinformation harmful to the national interest. On 6 August 2000 he had been charged with espionage for the United States of America as a result of his participation in a seminar organized in 1994 by the United States Department of State. FIDH was pleased to note that he had recently been released but noted with concern that in recent years the Egyptian authorities had sought to gag anyone who criticized the Government's policy. Hafez Abu Saada, the Secretary-General of the Egyptian Organization for Human Rights (EOHR), had been accused of receiving funds without government approval, and on 30 July 2000 the registration of EOHR as a non-governmental organization had been postponed for unspecified security reasons.

73. FIDH was also deeply concerned by the repression of the democratic opposition in Kyrgyzstan, where certain political parties had been excluded from the electoral process. Moreover, an arrest warrant had been issued against the Chairman of the Kyrgyz Committee for Human Rights, Mr. Ramazan Dyryldaev, who had just met with members of the United Nations Human Rights Committee in Geneva.

74. FIDH and its Peruvian affiliate, the Asociación por Derechos Humanos (APRODEH), denounced the measures taken by the Peruvian executive branch to replace judges and magistrates under its control. In addition, some 3,000 persons detained on charges of terrorism were subjected to a prison system that sought to break them physically and mentally. FIDH and APRODEH also condemned Peru's decision to remove itself from the jurisdiction of the Inter-American Court of Human Rights.

75. FIDH and its affiliate in Northern Ireland, the Committee on the Administration of Justice (CAJ), welcomed the ongoing progress towards peace in Northern Ireland but regretted that the British Government was not doing enough to implement the recommendations of the Independent Commission on Policing and persisted in maintaining the current state of emergency. That refusal to support real change seriously undermined the peace process. FIDH and CAJ also called upon the British Government to clarify the murders of Rosemary Nelson and Patrick Finucane.

76. FIDH and the Viet Nam Committee on Human Rights were seriously concerned at the violations of the freedom of expression and religion in Viet Nam. The patriarch of the Unified Buddhist Church, Thich Huyen Quang, 83 years old, had been detained without a trial since 1982.

77. In Viet Nam there was no free press, nor was there any religious freedom. Anti-Buddhist repression was systematic. For example, the Quan Am pagoda had been taken over and all traces of Buddhism had been wiped out. The Lieu Quan Buddhist Cultural Centre and its printing press, confiscated in 1975, had yet to be returned to their owners. The Cultural Centre's 10,000 books had been burned.

78. FIDH and the Viet Nam Committee on Human Rights appealed to the Sub-Commission to call upon the Vietnamese Government to implement the recommendations of the Special Rapporteur on religious intolerance. The two organizations also hoped that the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Working Group on Arbitrary Detention would visit the country soon.

79. Mr. LITTMAN (Association for World Education) said that ever since the declaration of a state of emergency in Egypt in 1981, massive abuses had occurred in the administration of justice there, particularly through a military tribunal whose decisions could not be appealed. On 30 June 2000 the police had arrested Mr. Saad Edin Ibrahim, a sociology professor at the American University in Cairo and a leading Egyptian human rights defender. On 10 August Mr. Ibrahim had been released on bail without any charge having been brought against him. He had first been accused of having received millions of Egyptian pounds from foreign sources in order to conduct research that would tarnish Egypt's image. Mr. Ibrahim, who had helped to monitor Egypt's parliamentary elections in 1995, had concluded that those elections had been rigged. Known also for his position in favour of the Copts, he had drawn the wrath of the Egyptian Government, which insisted that the Copts and Muslims lived in perfect harmony, when he had described the Copts as a minority, a term unacceptable to the Government. At a symposium held in Cairo in February 2000 he had courageously demanded the nullification of the clause in the Egyptian Constitution that established Islamic law (Shariah) as the main source of legislation, considering that provision to be the primary cause of Egypt's inter-religious problems. Lastly, he had been accused of espionage for having given a lecture in Washington organized by the United States Department of Defence.

80. The Association for World Education called upon the members of the Sub-Commission to raise their voices individually and collectively every time human rights defenders were threatened with arbitrary detention, as Mr. Joinet had done in the case of Ramazan Dyryldaev. Whenever a State party ratified an international instrument, that instrument should be considered to be binding.

81. Mr. ALI KASHMIRI (European Union of Public Relations) said that as an activist in a major political party in Kashmir, which was currently occupied by Pakistan, he had had to flee his country and seek asylum in Switzerland. When he had been arbitrarily arrested and incarcerated, he had come to realize that an undeclared emergency prevailed in Kashmir which was a source of human rights violations. He called upon the international community, and the Sub-Commission and the Commission on Human Rights in particular, to take a close look at the

Pakistani judicial system and the state of the judiciary in Kashmir. Pakistan was a country that did not respect human rights, particularly since the elected Government had been removed by the military. It was also a country in which religious organizations of a Fascist nature were legion. Religious seminaries (madrassahs) had become centres of fanaticism where new generations were indoctrinated and encouraged to display intolerance. The spread of religious hatred, which was at the root of many conflicts around the globe, particularly in Pakistan, should be declared an international crime. The proliferation of small arms, especially between Afghanistan and Pakistan, had threatened communities, groups and nations.

82. The people of Jammu and Kashmir were suffering from oppression and repression. The Sub-Commission should use its influence to persuade Pakistan to stop transborder terrorism, drug trafficking and the proliferation of small arms so that the region could know stability and peace.

83. Mr. TAHIR AZIZ (World Muslim Congress) said that the legal impunity of State organs lay at the heart of all human rights violations. The Sub-Commission must therefore consider the question of impunity in any part of the world with a view to remedying such situations. The innumerable acts of torture, arbitrary detention, summary execution and extrajudicial killings by the Indian security forces occupying the territory of Jammu and Kashmir was one manifestation of impunity. The present Indian Government was doing nothing to end that situation. In April 2000, according to the Kashmir Times, the Special Operations Group of the Kashmir Police and the Paramilitary Central Police Force had "emptied their automatic guns on a procession in Anantnag outskirts without any apparent provocation, killing 7 and wounding 11 others". Although the Indian Government had signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in October 1997, the impunity, firmly established in Indian legislation, of those who practised torture was a major contributor to that phenomenon. An example could be found in Section 6 of the Indian Armed Forces Special Act 1958. In addition, the current Government in India had put forward a proposal to introduce new anti-terrorist legislation in India. The proposed bill was a source of concern to many human rights activists and NGOs such as Amnesty International. His organization requested the Sub-Commission to ask the Government of India to explain its position on the various laws enforced in Kashmir, to express serious concern at the proposed anti-terrorist bill and to provide technical assistance to the Indian Government so that it could bring its laws into conformity with international law.

84. Mr. ARZUAGA and Ms. RUSSOMANDO (International League for the Rights and Liberation of Peoples) took the floor to address the topic of impunity.

85. Mr. ARZUAGA (International League for the Rights and Liberation of Peoples) said that any amnesty or similar measure that was intended to keep perpetrators of human rights violations from being tried and punished was inconsistent with the international obligations of States. International and regional human rights bodies had also stated that the perpetrators of such acts should be tried in ordinary courts and not by military tribunals. In that connection, the recent decision by the Supreme Court of Chile to take away the immunity of the former dictator Pinochet was an important step. However, the Chilean authorities had not yet rescinded Decree-Law No. 2191, providing for an amnesty, or the legislation which conferred sweeping

powers on the military courts. However, the Human Rights Committee and the Inter-American Commission on Human Rights had stated that the amnesty had been incompatible with Chile's international obligations. Similarly, in El Salvador the authorities had still not repealed the Amnesty Act, even though the amnesty had been declared contrary to international human rights law. The Sub-Commission should therefore urge States that tolerated impunity to repeal their amnesty laws and to have the ordinary courts try the members of the military and the police who were guilty of violating human rights.

86. Ms. RUSSOMANDO (International League for the Rights and Liberation of Peoples) said that the statement by the Turkish authorities that the new law concerning civil servants was intending to combat impunity was false. In fact, the new law stipulated that only the administration was competent to determine whether a civil servant could be prosecuted. It should be noted that torturers were seldom tried in Turkey, and that persons who decided to lodge complaints encountered numerous obstacles. It was therefore extremely difficult to obtain medical certificates from forensic doctors; pressure was placed on victims and/or their family members to prevent them from filing complaints or testifying, and many completely arbitrary procedural rules were applied during trials. Lastly, the rare sentences given to those who practised torture were seldom implemented.

87. Mr. WEISSBRODT said that he was very concerned by the disappearance in Medan at the beginning of the month of Mr. Hamzah, chairman of the International Forum for Aceh, and he urged the Indonesian Government to conduct a thorough investigation of the matter.

88. With regard to the detention of asylum-seekers, a number of States, particularly in North America and Western Europe, had imposed policies that allowed persons seeking asylum to be detained, often for indefinite periods. Such policies in fact were intended to discourage people from seeking asylum in certain countries. That situation raised a number of serious human rights concerns.

89. He welcomed the adoption in February 1999 by the Office of the United Nations High Commissioner for Refugees (UNHCR) of the Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers. If properly applied, those Guidelines would significantly improve the situation of many asylum-seekers. He also welcomed the work done by the Working Group on Arbitrary Detention on the application to immigrants and asylum-seekers of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment.

90. The standards applicable to the detention of asylum-seekers included: the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, in particular article 31; the International Covenant on Civil and Political Rights, in particular articles 7, 9 and 10; the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment; and the United Nations Standard Minimum Rules for the Treatment of Prisoners. The detention of asylum-seekers might also violate other international standards: it could, for example, constitute cruel and degrading treatment and thus violate article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

91. As the UNHCR Guidelines so accurately stated, article 31 of the Convention relating to the Status of Refugees exempted refugees coming directly from a country of persecution from being punished on account of their illegal entry or presence. Furthermore, under international law, asylum-seekers should be detained only in exceptional and strictly limited circumstances. If an asylum-seeker was detained, the detention must take place under humane conditions and in a facility separate from those used to incarcerate persons convicted of criminal offences. There were currently a number of States that did not follow that policy.

92. Alternatives to detention should be contemplated, such as the provision of a guarantor or surety and the use of "open centres", such as existed in Scandinavian countries and Germany. States should endeavour to avoid detaining vulnerable persons such as children, torture victims, elderly persons and persons with disabilities. In addition, family members should not be separated during detention. If it was necessary to detain asylum-seekers, those individuals must be allowed adequate opportunities to receive visits from legal counsel and family members and to obtain information in a language they understood.

93. Ms. PARÉS (Pax Romana), speaking also on behalf on the Centre Europe-Tiers Monde, International Young Catholic Students and Franciscan International, noted the irregularities that had taken place in the investigation of the enforced disappearance of Mr. Alirio Pedraza Becerra, a human rights activist, on 4 July 1990 in Colombia. In June 2000 a judicial investigation that had been mandated five years earlier had finally been conducted on the premises of the army's School of Cavalry and Logistics School. In a press release issued subsequently by the armed forces, Mr. Gustavo Gallón, Director of the Colombian Commission of Lawyers and Special Representative of the Commission on Human Rights, was accused of attempting to tarnish the prestige of the army. Apart from jeopardizing Mr. Gallón's safety, that statement was a violation of Presidential Directive No. 007 of 9 September 1999, which called upon all public servants to refrain from undermining the legitimacy of human rights organizations and their members when they acted in accordance with the Constitution and the law.

94. The organizations on whose behalf she spoke were concerned by the continuing human rights violations in Colombia, particularly enforced disappearances, and by the situation of Mr. Gallón. They believed that the Sub-Commission must respond to the violations of the rights of human rights activists and they appealed that the lives and physical integrity of human rights defenders should be guaranteed. They also called upon the Colombian Government to impose the appropriate legal sanctions for violations of the law and invited the Sub-Commission to take concrete steps to ensure that Mr. Gallón would be able to resume his human rights activities in Colombia.

95. Mr. BARNES (International Human Rights Association of American Minorities) said that the United States of America paid little attention to human rights, and he invited the Sub-Commission to study judicial decisions affecting every aspect of the human rights of indigenous peoples.

96. Indigenous peoples must be treated with equality, pursuant to the International Bill of Human Rights and the principle of sovereignty over their lands and their resources. However, the Working Group for the elaboration of a draft declaration on the rights of indigenous peoples was disregarding the sovereign equality of the indigenous peoples of Hawaii and Alaska. Those

peoples were demanding recognition and respect by the Commission on Human Rights as colonial peoples. As such, they ought to be able to participate in the debate when they were discussed by the United States Government. Although that country had claimed that it had satisfied the requirements for removing Hawaii and Alaska from the list of Non-Self-Governing Territories, the Charter of the United Nations and international law had been violated. General Assembly resolution 1469 (XIV), which had endorsed that removal, had been adopted without proper consideration by the Committee established by the Assembly in its resolution 1467 (XIV) for the purpose of obtaining information relating to Non-Self-Governing Territories. The General Assembly had set out principles for determining whether or not the administering Power had satisfied the requirements for removing a Territory from the list of Non-Self-Governing Territories. Principle 5 stipulated that the administrative, political, juridical, economic or historical situation could be taken into consideration; principle 8 stipulated that integration should be on the basis of complete equality between peoples; and principle 9 stipulated that integration should be the result of the freely expressed wishes of the people concerned. Those principles had not been respected, and speaking as an ambassador and representative of the traditional indigenous Governments of Alaska, he wished to lodge a diplomatic protest against the lack of process and procedure concerning removal from the list and to assert the right to self-determination of the Tununak, Kasgit and Eyak peoples. He called upon the Sub-Commission to adopt a resolution aimed at reviewing the situation in Alaska and bringing pressure to bear on the colonial State of Alaska and on the United States of America. He also requested that a special rapporteur should be appointed to investigate the legal history of the indigenous populations of Alaska, Hawaii and the United States of America, peoples that continued to suffer discrimination.

The meeting rose at 1.05 p.m.